IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 19TH JANUARY 2007 / 29TH PAUSHA 1928

MFA.No. 707 of 1999(C)

OPMV.3303/1992 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KOLLAM
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APPELLANT/RESPONDENT:

UNITED INDIA INSURANCE CO. LTD.,
REPRESENTED BY ITS DEPUTY MANAGER,
THIRD PARTY CLAIMS CELL,
VETTUKATTIL BUILDINGS, M.G. ROAD,
KOCHI – 682 016.

BY ADV. SRI.P.SANKARANKUTTY NAIR

RESPONDENTS/PETITIONER & RESPONDENTS NOS. 1 & 2:
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1. K.G. DENNIS, KULANGARA VEEDU,
KODIVILA P.O., EAST KALLADA, KOLLAM.

2. MRS. MARIYAMMA JOHNSON,
CHALACKAL PUTHENVEEDU,
EAST KALLADA P.O., KOLLAM.

3. MR. SHAJI, S/O. ALEXANDER,
BROTHERS NIVAS, THEKKEMURI,
EAST KALLADA, KOLLAM.

BY

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 19/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.T. SANKARAN, J.

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M.F.A. No. 707 OF 1999

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Dated this the 19th January, 2007

J U D G M E N T

The third respondent in O.P. (MV)No. 3303 of 1992 on the file of the M.A.C.T, Kollam challenges the award dated 18.12.1998 only to the extent to which the Tribunal did not permit the appellant to recover the compensation amount from the respondents Nos. 1 and 2.

2. The accident occurred on 10.07.1992. The claimant was travelling in a private bus bearing registration No. KRQ.7353 owned by the first respondent before the Tribunal and driven by the second respondent therein. The Tribunal awarded a sum of Rs. 10,750/- in favour of the claimant with interest. It was held that the respondents Nos.1 to 3 are liable. The third respondent, Insurance Company, was directed to deposit the award amount. It is also stated in the award that execution shall be first against the third respondent, and respondents Nos. 1 and 2 shall be proceeded against only later.

3. It is stated in the grounds 'B' and 'C' of the Memorandum of

Appeal thus:

> "B. The driving license produced as that of the third respondent is purported to have been issued from the licencing authority, Madras City (West). On a verification of licence the said licencing authority about the correctness of the said driving licence, it was found to be a bogus one and the Assistant Licencing Authority issued a certificate to that effect and the same was produced before the Tribunal in a connected case. But these matters were not considered by the Tribunal.
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> C. The opportunity to summon the registering authority and examine him before the Tribunal was not made available to the appellant, in spite of the request for the same. It amounts to denial of opportunity to the appellant to prove its case. "

There is no appearance for the respondents.

4. In the facts and circumstances of the case and in the light of the contentions raised in grounds B and C referred to above, the Tribunal shall consider the contentions raised by the appellant on the merits after affording an opportunity to the appellant to adduce evidence and to produce documents. The appellant shall also be afforded an opportunity to summon the registering authority to prove the contention that the driving licence produced by the second respondent before the Tribunal was a bogus one. The Tribunal shall consider the question as to whether the

appellant-insurer should be permitted to realise the amount of compensation paid by it from the respondents Nos. 1 and 2 in the O.P.(MV) or from any one of them. However, the finding of the Tribunal on issue No.1 and the finding on issue No.2 that the claimant is entitled to get a sum of Rs.10,750/- as compensation are hereby confirmed.

In the result, the M.F.A. is allowed in part in the manner indicated above. The parties shall appear before the Tribunal on 20.02.2007.

K.T. SANKARAN,
JUDGE.

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K.T. SANKARAN, J.

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M.F.A. No. 707 OF 1999

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Dated this the 19th January, 2007

J U D G M E N T